CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

ORDER No. 90-118

WASTE DISCHARGE REQUIREMENTS PROHIBITING WASTE DISCHARGE
and
RESOLUTION RECOMMENDING DENIAL OF WATER QUALITY CERTIFICATION

BROWNING-FERRIS INDUSTRIES
APANOLIO CANYON CLASS III LANDFILL
and
FILL AND EXCAVATIONS IN WETLANDS AND OPEN WATERS IN THE
CONSTRUCTION AND OPERATION OF THE
APANOLIO CANYON CLASS III LANDFILL
HALF MOON BAY, SAN MATEO COUNTY

The California Regional Water Quality Control Board, San Francisco Bay Region, (hereinafter called the Board), finds that:

1. Browning-Ferris Industries of California, Inc. (BFI) by application dated June 11, 1986 has applied for Waste Discharge Requirements for a new Class III landfill in Apanolio Canyon.

2. BFI, by application dated June 11, 1986, applied to the State for Water Quality Certification under Section 401 of the Clean Water Act for the filling and/or excavation of 3.4 acres of riparian wetlands and 4,649 feet of Apanolio Creek in Apanolio Canyon for the purpose of constructing the landfill. The creek and wetlands are waters of the State and of the United States.

3. The project site, as shown on Attachment A, is located in the upper reaches on Apanolio Canyon, approximately 3 miles northeast of Half Moon Bay in San Mateo County. The landfill would occupy 285 acres, contain about 125 million cubic yards of refuse and construction debris and have a lifetime capacity of about 93 years at a disposal rate of about 3000 tons per day.

4. Apanolio Creek and the groundwater downgradient of the proposed landfill site are used for domestic water supply and irrigation and was historically used as a municipal water supply.

5. Apanolio Creek is a perennial creek and provides good habitat for resident fish populations and potential steelhead migration, spawning and rearing. The riparian corridor along the creek contains areas periodically ponded with water that are composed of hydric soils and are periodically inundated with surface and groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation

typically adapted for life in saturated soil conditions, and therefore are defined as a wetland according to 40 CFR 122.2.

6. Apanolio Creek and the adjacent riparian wetland corrridor provide valuable habitat for a wide variety of wildlife.

7. The construction of the landfill would: (a) result in filling and/or excavation of 3.4 acres of riparian wetlands and 4,649 feet of Apanolio Creek, (b) eliminate groundwater storage and recharge in the portion of Apanolio Canyon used as a landfill, (c) alter the drainage pattern which will cause a 40% reduction in summer flow in the creek, and (d) reduce recharge to the aquifer and creek downgradient of the landfill boundary.

8. As mitigation for the loss of beneficial uses of the waters of the State, resulting from the discharge of fill material into Apanolio Creek and adjacent wetlands, BFI has proposed the following, as outlined in the June 19, 1989 Final Mitigation Plan: 1) augment the flow in Corinda Los Trancos Creek to provide adequate flow to create and support a fisheries habitat, 2) augment the flow in Apanolio Creek to ensure no net reduction in dry season stream flow, 3) construct several ponds in Corinda Los Trancos Canyon adjacent to the creek and establish riparian wetland habitat around the ponds, 4) construct an injection well system to replace lost recharge to the lower canyon aquifer and lost groundwater storage, and 5) several stream channel enhancement projects in creeks in San Mateo County to improve fish migration and spawning.

9. The Regional Board under Section 401 of the Clean Water Act reviews applications to determine if the proposed activity will meet State water quality standards and objectives for Water Quality Certification for the proposed activity.

10. Water Quality Certification is a certification for an activity that requires a federal license or permit that there is reasonable assurance that the activity which may result in discharge to waters of the United States will not violate water quality standards (Title 23, California Code of Regulations, Section 3830 et. seq.).

11. The U.S. Army Corps of Engineers issued a public notice for a Section 404 Wetlands Fill Permit for the proposed project on June 8, 1987.

12. BFI submitted applications for Water Quality Certification on June 11, 1986, with many supplemental submittals up to and including the Final Mitigation Plan dated June 19, 1989, and the Regional Board Executive Officer found this application complete on August 14, 1989.

13. Relevant plans and policies for Board consideration of the proposed Water Quality Certification include: Section 13142.5 of the California Water Code, State Senate Concurrent Resolution No. 28, Title 23 of the California Code of Regulations, State Water Resources Control Board Resolution 68-16, and the San Francisco Bay Basin Plan.

14. Section 13142.5 of the California Water Code requires that the "highest priority shall be given to improving or eliminating discharges that adversely affect... Wetlands, estuaries, and other biologically sensitive areas".

15. State Senate Concurrent Resolution No. 28 states that, "It is the intent of the legislature to preserve, protect, restore and enhance California's wetlands and multiple resources which depend of them for the benefit of the people of the State".

16. Section 2533, Subchapter 15, Chapter 3, Title 23 of the California Code of Regulations specifies that new Class III landfills shall be sited to "ensure no impairment of beneficial uses of surface water or of groundwater beneath or adjacent to the landfill."

17. The State Water Resources Control Board Resolution No. 68-16 states that "whenever the existing quality of water is better than the quality of water established in policies as of the date on which such policies become effective, such existing high quality will be maintained until it has been demonstrated to the State that any change will be consistent with maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of such water, and will not result in water quality less than that prescribed in the policies".

18. The Board adopted a revised Water Quality Plan for the San Francisco Bay Basin (Basin Plan) on December 17, 1986 and amended it on August 19, 1987 and July 18, 1989. The Basin Plan includes policies for regulating wetland fill. This Order implements the objectives stated in the Basin Plan.

19. The Basin Plan states that the Regional Board will utilize EPA's Section 404(b)(1) Guidelines in determining the circumstances under which wetlands filling may be permitted. The Section 404(b)(1) Guidelines specify that permits may be granted only for the least damaging practicable alternative to achieve the basic project purpose.

20. The Basin Plan Wetland Fill Policy establishes that there be no net loss of wetland acreage and no net loss of wetland habitat value, when the project and proposed mitigation are evaluated together.

21. Environmental documents for the proposed project identified Corinda Los Trancos Forefill as a site alternative to the proposed project. The Corinda Los Trancos alternative is estimated to provide San Mateo County with at least 20 years of land disposal operation given estimated waste generation rates and state-mandated recycling goals. The California Department of Fish and Game, U.S. Fish and Wildlife Service and the U.S. EPA have found that the Corinda Los Trancos alternative is less environmentally damaging than the proposed project.

22. The proposed mitigation plan will not ensure that there is no net loss of habitat value. The proposed measures to create and maintain a steelhead fishery in Corinda Los Trancos Creek will require intensive management, to such a degree that makes it highly vulnerable to system failures. Therefore, lower habitat value will be realized than in the current natural systems in Apanolio Creek and Canyon. Further, the mitigation habitat would provide a lower riparian-related wildlife value than Apanolio Creek and Canyon. Riparian habitats can enhance the value of bordering upland areas for wildlife when they are located adjacent to or within large expanses of continuous and isolated upland habitat. The proposed mitigation habitats are less spacially isolated from human disturbance and have less continuity with isolated upland habitats compared to the Apanolio systems.

23. The granting of Water Quality Certification for the proposed project is not warranted because: (1) a less environmentally damaging practicable alternative to the proposed Apanolio Canyon landfill exists, namely, the Corinda Los Trancos Forefill landfill alternative, and (2) the proposed mitigation does not provide for no net loss of habitat value.

24. The discharge of fill material into the open waters of Apanolio Creek and adjacent wetlands will cause a condition of pollution to exist in these waters of the State by altering the quality and quantity of water in the area, that is needed to support wetland beneficial uses and the beneficial uses of Apanolio Creek, to a degree that will eliminate the beneficial uses of these waters of the State.

25. Section 13243 of the California Water Code allows the Regional Board to establish, in waste discharge requirements or a water quality control plan, "certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted".

26. The California Environmental Quality Act (CEQA) requires all projects approved by State agencies to be in full compliance with CEQA, and requires a lead agency to prepare an appropriate environmental document (EIR) for such projects.

27. The activity, together with the proposed mitigation measures to offset adverse impacts, described in BFI's Water Quality Certification and Waste Discharge Requirements applications for the discharge of fill and waste materials in order to construct and operate a Class III landfill in Apanolio Canyon, San Mateo County, is a project as that term is defined in CEQA.

28. San Mateo County, as CEQA lead agency, adopted a Final Environmental Impact Report for the landfill project on February 22, 1984.

29. The unavoidable adverse impacts associated with the land disposal project include the filling/excavation of riparian wetlands and open waters of Apanolio Creek, reduction in the summer stream flow in Apanolio Creek, elimination of a shallow groundwater resource in the upper portion of the canyon.

30. This Order would preclude these impacts by denying project approval.

31. The existing benefical uses of the groundwater beneath the landfill area are as follows:

    a. Recharge of the lower Apanolio Canyon Aquifer
    b. Recharge of Apanolio Creek to maintain streamflow during the dry season and to support riparian wetland habitat

    The potential beneficial uses of the groundwater beneath the landfill are as follows:

    a. Domestic supply
    b. Agricultural supply

    The existing and/or potential benficial uses of the surface water in Apanolio Canyon, that includes the entire length of Apanolio Creek and the unnamed tributaries in the landfill areas and the lower canyon, are as follows:

    a. Cold fresh water habitat
    b. Warm fresh water habitat
    c. Wildlife habitat
    d. Fish migration and spawning
    e. Water contact recreation
    f. Non-contact water recreation
    g. Municipal and domestic water supply
    h. Agricultural water supply
    i. Recharge of the groundwater to support other beneficial uses
    j. Riparian wetland habitat

32. The Board has notified the discharger and interested agencies and persons of its intent to prohibit discharge into Apanolio Creek and associated wetlands and to recommend denial of water quality certification and has provided them with an opportunity to submit their written views and recommendations.

33. The Board in a public hearing held on July 18, 1990 heard and considered all testimony pertaining to the discharge.

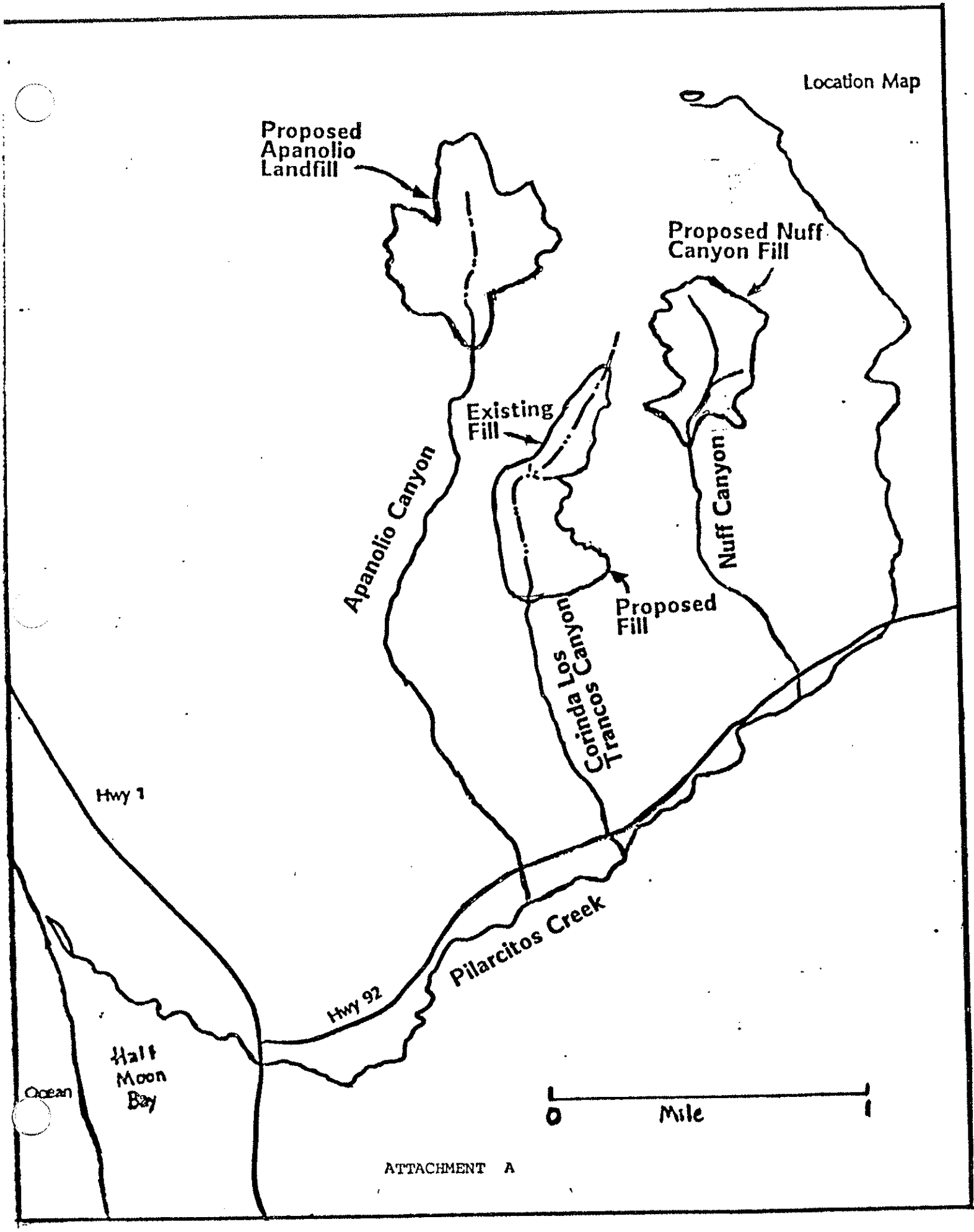
THEREFORE BE IT RESOLVED, that this Regional Board recommends that the Executive Director of the State Water Resources Control Board deny Water Quality Certification in accordance with Section 401 of the Clean Water Act and State regulations provided in Title 23 California Code of Regulations Section 3830 et. seq. for Browning-Ferris Industries of California, Inc. Fill and Excavations in Wetlands and Open Waters in the Construction and Operation of the Apanolio Canyon Class III Landfill, Half Moon Bay, San Mateo County, California, and directs the Executive Officer to transmit this resolution to the Executive Director of the State Water Resources Control Board.

Further, IT IS HEREBY ORDERED that the proposed discharge of waste into Apanolio Creek and associated wetlands is prohibited.

I, Lawrence P. Kolb, Assistant Executive Officer, do hereby certify the foregoing is a full, true and correct copy of an Order of the California Regional Water Quality Control Board, San Francisco Bay Region on August 15, 1990.

LAWRENCE P. KOLB
~~Assistant~~ Acting Executive Officer

Attachment: Site Map



ATTACHMENT A